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UNCLAS SECTION 01 OF 07 SHANGHAI 000315

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SUBJECT: A ROUNDUP OF IPR PROTECTION IN SHANGHAI

REF: SHANGHAI 314

SHANGHAI 00000315 001.2 OF 007

¶1. (SBU) Summary: Shanghai is one of the bright spots in intellectual property rights (IPR) protection in East China and is squarely focused on putting it best foot forward for the 2010 World Expo. In 2008, the city beefed up its IP strategy in keeping with the June 2008 National IP Strategy; it also developed a strategy specifically for protecting IP during the Expo. Shanghai has also taken the lead on IPR coordination between the city's IP-related agencies and with the neighboring provinces of Zhejiang and Jiangsu. In April, Shanghai hosted a first ever joint roll-out of IPR white papers with Zhejiang and Jiangsu. Shanghai administrative agencies continue to implement IPR programs and intensify enforcement actions, indicating its seriousness regarding IP protection. Shanghai courts, which receive high marks from the U.S. business community for their professionalism, transparency, and fairness, are attracting large numbers of both foreign and domestic rights litigants. However, counterfeit markets, pirated optical discs, and internet-based piracy continue to be a growing problem in the city. Although Shanghai and other local jurisdictions do not have a perfect record on IPR, recognition of their accomplishments in USG reports, such as the 301 Report, provide a powerful incentive for change. The following report is taken from a series of meetings with IP administrative, judicial, enforcement officials from April to July 2009. End Summary.

IP Environment and Strategy in Shanghai

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¶2. (SBU) As Shanghai's economy evolves from low-tech manufacturing to service and R&D intensive industries, Shanghai's authorities have increasingly emphasized the need to protect IPR in order to promote innovation. Since 2004, Shanghai has been using the "Outline of Shanghai Intellectual

Property Strategy" as its basic guiding document on IPR. In 2008, the city supplemented the existing IP strategy to bring it into conformance with the June 2008 "Outline of the National Intellectual Property Strategy" issued by the State Council. After seeking public comment, Shanghai issued the document "Several Decisions on the Implementation of the Outline of the National Intellectual Property Strategy" in September, 2008. The new strategy focused on eight main aspects: "improving local IP laws and regulations, promoting IP creation and application, strengthening IP protection, enhancing IP administration, developing IP services, training more IP talent, promoting construction of IP culture, and broadening domestic and overseas communication and cooperation on IP issues." In addition to the new strategy, it also created an IP work plan in preparation for the 2010 World Expo. The city published a booklet entitled the "Intellectual Property Protection Manual for World Exposition 2010 Shanghai China", which provides a short guide for the general public on how to protect IP during the Expo. Shanghai IP Administration authorities noted that the city is especially intent on protecting the "Hai Bao" (Sea Treasure) symbol of the Expo, similar to what was done in Beijing during the 2008 Summer Olympics for mascots Bei, Jing, Huan, Ying and Ni.

#### Serious About Coordination

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13. (SBU) Shanghai prides itself in its coordination effort, both among city IP-related agencies and with neighboring provinces. Within Shanghai, coordination is done via the Shanghai Intellectual Property Joint Council (Lianxi Huiyi), a body made up of a wide range of administrative, enforcement and judicial organs (reftel). Shanghai authorities report the

SHANGHAI 00000315 002.2 OF 007

Council meets several times a year. In September 2008, the Council met to discuss implementation of the new Shanghai strategy. As a result of the meeting, authorities specified 52 different tasks to improve local IP protection. In addition, all Council member agencies were requested to incorporate the contents of the new IP strategy into their own work plans the following year.

14. (SBU) Shanghai also has taken the lead on coordinating IP issues with neighboring jurisdictions. For the first time ever, Shanghai, Jiangsu, and Zhejiang held a joint-IP whitepaper roll-out in Shanghai in April 2009. The event was well organized and attended and featured administrative, judicial and enforcement officials from the respective jurisdictions. U.S. rights holders also regularly compliment Shanghai IP authorities for their assistance in transferring cases to neighboring jurisdictions. One U.S. company reported that the Shanghai PSB drove the company representatives to meet with Jiangsu PSB authorities when it became clear the IP infringement involved that province. Shanghai authorities themselves report that they regularly transfer cases because the economies of the region are so closely knit. However, coordination outside the immediate East China region is more sporadic.

#### Shanghai Courts Tackle IPR

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15. (SBU) The court system in Shanghai is increasingly becoming a venue of choice for both foreign and domestic rights holders. American businesses consistently praise Shanghai courts for

their high level of transparency, consistency and expertise. In 2003, Shanghai courts implemented a system to increase transparency through publishing IP-related cases on the Internet. Building on its reputation as high caliber center for judicial IP protection, Shanghai took a number of measures in late 2008 to highlight and strengthen its judicial capabilities.

On October 29, 2008 Shanghai held a ceremony for the establishment of the Shanghai Intellectual Property Arbitration Court with the support of the Shanghai IP Administration and the Shanghai Arbitration Commission (SAC). By establishing a special IP Arbitration Court, Shanghai hopes to gain a similar reputation for its arbitration abilities. In November 2008, Shanghai highlighted its judicial IP work with several separate events: a press conference to outline the initiative and summarize Shanghai courts' accomplishments in IPR protection, public IP trials, the announcement of judgments on several high profile IP cases, and a meeting to highlight judicial efforts on enforcing China's National IP Strategy.

16. (SBU) As in other regions of China, IPR judges tend to be the most educated members of the Chinese judiciary, although their docket only makes up a small percentage of total civil or criminal litigation. According to media reports, all judges dealing with IPR cases in Shanghai hold university degrees and about 60 percent hold masters degrees. In a June 3 meeting, Shanghai High Court officials said there are 10 judges in the High Court who handle IP cases, with the senior IP judge having 15 years of experience. Including lower courts, there are 48 judges in Shanghai handling IP cases. The Shanghai High Court said that of the 48 judges, three have doctorate degrees (two of whom are seated in the Shanghai High Court), six judges have technical backgrounds, and 20 judges have been educated overseas. Shanghai has also established the Shanghai Judges Training Center, which holds one or two training courses on IPR every year to enhance judges' IPR-related knowledge.

SHANGHAI 00000315 003.2 OF 007

17. (SBU) Shanghai High Court officials noted that there has been a marked increase in IP-related cases. They speculate that under the current economic downturn, as profits decrease, companies have been stepping up their efforts to recover losses from IP infringements. The Shanghai High Court reported that 50 percent of all IP-related cases are copyright-related, 30 percent are patent and trademark cases, and the remaining 20 percent involve trade secrets and unfair competition. Among cases accepted in 2008, 231 involved foreigners. Foreign-related IPR cases in Shanghai last year made up approximately 15.2 percent of all IPR-related cases, compared to the national average of approximately 3.5 percent.

18. (SBU) In total, Shanghai courts accepted 1,757 IPR civil cases in 2008, of which 1,634 were settled, an increase of 43.1 percent and 33.2 percent respectively over 2007. Shanghai courts also accepted 79 criminal cases and closed 81. This represents an 11.3 percent increase in the number of cases accepted and a 14.1 percent increase in the number of closures over 2007. In 2008, Shanghai's courts accepted over 600 online infringement cases of first instance, accounting for more than 40 percent of the total cases accepted. This represents an increase of 200 percent over 2007. In 2008, Luwan People's Court set up an IP Tribunal. The Shanghai Number 2 Intermediate People's Court established the first Anti-monopoly Collegiate Bench in the country.

19. (SBU) Shanghai has now implemented a combined trial model, which integrates all basic level courts in Shanghai with IP tribunals, and handles civil, administrative and criminal IP

cases. The model was based on a trial model at the Pudong District Court in Shanghai, which established the combined system in 2000. From 2001 through March of 2008, this tribunal handled 602 civil cases and 44 criminal cases. (Comment: While we welcome Shanghai courts' more vigorous protection of IP, the trend towards establishing more basic-level courts to resolve IPR cases is, in some respects, a move in the opposite direction of U.S. interests -- to encourage a national-level appellate IPR court to minimize local protectionism and influence. Currently, with cases heard at an intermediate level, a case can be appealed only to the provincial high court, and the litigant has no right to have the case heard in a province outside of the province where the case was originally heard. End comment.)

#### Shanghai IP Administrative Efforts

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¶10. (SBU) The Shanghai IP Administration (SIPA), which not only functions as the receiving agency for patents, but is also the lead IP coordinating agency, continues to be a strong partner and ally of the Consulate. The IP Administration reaches out to the Consulate on a regular basis, eliciting suggestions and inviting the Consulate to participate in events. Recently SIPA has focused much of its efforts on setting up the "Shanghai Information Service Platform", which will enable all Shanghai IP-related agencies to share information and provide improved service to rights holders. Most importantly the platform will link IP administrative enforcement and criminal enforcement to facilitate the transfer of cases. Phase I of the operation has already started a trial operation. The Shanghai IP Administration noted that it is also focused on creating an "Intellectual Property Experimental Park", exploring new models for patent trusteeship, and providing improved IP services for local SMEs. Regarding its patent load, SIPA accepted 23 patent dispute cases in 2008 (a decrease of 45.2 percent over 2007). Of these, it closed 31 cases (a decrease of 31.1 percent over

SHANGHAI 00000315 004.2 OF 007

2007), of which 6 were foreign-related cases.

#### Shanghai Copyright Bureau

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¶11. (SBU) During a July 10 meeting with the Shanghai Copyright Bureau, Director General Jiao Yang noted the establishment of a new Copyright Industry Promotion Department in addition to the Copyright Enforcement Department to promote the copyright industry. Also in 2009, Shanghai set up a Copyright Industry Trade Center, which is gathering statistics on the development of copyright industry in Shanghai. According to Jiao, Shanghai has taken several measures on copyright enforcement. Under the Copyright Bureau's guidance, shopping malls in Shanghai are working with enforcement authorities to fight pre-installed illegal software. Shanghai also initiated a crack down named "City Protection" to stop vehicles with pirate goods from entering the city. Jiao said the Shanghai Copy Bureau has signed joint enforcement agreements with sister agencies in Jiangsu and Zhejiang and an electronic system was built to provide assistance to right holders. In 2008, Shanghai Copyright Bureau inspected 61 operating units, closed 15 websites, issued punishments in 27 administrative cases, and confiscated illegal profits and issued penalties totaling 210,000 RMB (USD 30,882).

¶12. (SBU) During a July 10 meeting with the Shanghai Administration of Industry and Commerce (SAIC), Deputy Director General Chen Xuejun noted the agency's main focus over the past year has been on implementing new policies to support trademark development. For example, the city developed a "model IP enterprise" program to recognize companies that are IP compliant. Chen also pointed out that the protection of international well-known trademarks is another main focus of trademark administrative enforcement. Under the direction of SAIC, shopping malls are establishing a trademark research system and checking the trademark when purchasing stock. In addition, Shanghai has expanded its list of "no buy" foreign brands to 60, along with increased enforcement of the list. The list prohibits the selling of the listed goods in certain areas such as "street" and "fashion" markets, so that authorized sales agents known to be marketing genuine products can fare better.

¶13. (SBU) SAIC Trademark Department Director Xing Dongsheng added that SAIC is studying Beijing's experience on protection IP during the Olympics, especially small markets and street vendors. He acknowledged that many vendors selling counterfeit goods moved to many other markets after the closure of the infamous counterfeit market, Xiangyang Market, in 2006. He added that SAIC is actively issuing injunctions on selling certain brands and requesting that market owners sign contracts on trademark protection with tenants. SAIC is also providing landlords with sample contracts that can be followed. Thus far, over 20,000 tenants have signed this type of contract with market owners and 200 tenants were required to move out of markets because of their trademark infringement activities in ¶2008. According to Xing, vendors in Yatai Market in Pudong, currently the largest counterfeit market in Shanghai, are now

SHANGHAI 00000315 005.2 OF 007

trying to promote their own brands or are seeking authorization from trademark owners to sell legitimate products.

¶14. (SBU) In a discussion about Shanghai's landlord liability laws, Xing said that said it is a good thing for right holders to proactively protect their right, but he was doubtful the courts would actually hold landlords liable in such cases. (Note: In a separate meeting on June 18, legal representatives from Coach Luggage notified the Consulate that they had initiated three lawsuits against different Shanghai landlords under the landlord liability law. Two of the cases were filed in lower courts, and one in an intermediate court. The cases represent the first known cases to be filed by foreigners in Shanghai under the law. When Econoff raised the issue of the cases, Xing was pessimistic about Coach winning the cases. End note.)

¶15. (SBU) Shanghai's Administrations of Commerce and Industry (AIC) handled 2,964 trademark infringement cases (a decrease of 2.2 percent over 2007) and transferred five cases for criminal prosecution. Among all of the cases handled, 2,112 cases were foreign related, accounting for 71.3 percent of the total (a decrease of 1.1 percent over 2007).

## Many Ways to File a Complaint

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¶16. (SBU) Shanghai was one of the first cities in China to establish an IPR complaint center in July 2006 and has since added 7 district level IPR complaint centers, mostly located in high-tech industrial parks. It also established an IPR Aid Center in April 2008 to give IP advice to small and medium size businesses free of charge. In a May 20 meeting at the Shanghai IP Complaint Center, Complaint Center Vice Director Cai Haibing said the center transferred about 40 cases to IP authorities in 2008, but only two or three cases were filed by foreigners. He pointed out that the number of total cases filed had actually decreased because another IP Complaint hotline "12330" was set up under the control of Shanghai IP Administration as a result of government agency reform. (Note: At the national level, the previous IP complaint hotline "12312" was under the control of the National Rectification and Standardization of Market Economic Order Office. After reform at the national level, this hotline changed to "12330", which fell under the control of the State Intellectual Property Office. During the "transition period", there are now two hotlines receiving IP complaints at the same time. End Note.) According to Cai, rights holders are now more actively filing complaints directly with the relevant government agencies, which has also caused the number of complaints to drop. He also noted that the center ensure that staff is present at every trade fair to receive complaints. (Note: On numerous occasions over the past year, Consulate staff have verified this is the case at trade fairs in Shanghai. End note.)

## Shanghai's PSB Enforcement

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¶17. (SBU) In 2008, Shanghai Public Security Bureau (PSB) investigated 1458 IPR-related cases and confiscated RMB 448

SHANGHAI 00000315 006.2 OF 007

million (USD 66 million) worth of money and commodities. (Comment: We suspect this amount may be inflated by cases that are not true IP-infringement cases. End comment.) Approximately 1,708 infringers received fines or other punishment. In August 2008, the Economic Criminal Investigation Department of Shanghai Public Security Bureau shut down an illegal store selling fake products of international well-known brands to foreigners (one famous international film star visited the store and bought a batch of illegal products during her stay in Shanghai). Two suspects were captured and over 290 counterfeit articles worth 1.4 million RMB (USD 200 million) were confiscated. According to Tang, the Shanghai PSB not only attaches great importance to cooperation with foreign enforcement agencies, but it also cooperates closely with foreign right holders such as Johnson and Johnson, Pfizer, and associations such as the Quality Brands Protection Committee.

## Counterfeit Markets Remain Unchecked

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¶18. (SBU) While production of IPR infringing goods is decreasing in Shanghai, purveyors of infringing goods, both on the streets and with small retail establishments, remain largely unchecked in the city. In July 2006, Shanghai closed its



premier counterfeit market, Xiangyang. However, several other markets have sprung up and thrive in its place. Many of the Xiangyang merchants simply moved to these other locations throughout the city. In our own informal survey, we found vendors from the old Xiangyang Market at three new counterfeit markets around Shanghai. The first market is the Shanghai Yatai Shenhui Recreational Shopping Center in Pudong, near the subway station of the Shanghai Science and Technology Building. The second market is Fengxiang Fashion and Gift Market in the Nanzheng Building on Nanjing Road. The market has three stories in the building and is widely touted on websites and blogs for expats and foreign tourists to Shanghai. (Comment: It is ironically located in the same building as the Shanghai IP Service Center.) The third market is the Shanghai Longhua Fashion and Gift Market in the Longhua area in the Xuhui District. This market also occupies three floors, but did not appear as busy as the other two markets during a recent visit.

¶19. (SBU) The items purveyed at the markets run the gamut from fake designer jeans to counterfeit golf clubs. The vendors said that their target consumers are mainly foreigners. And, from the looks of it, many foreigners are visiting the three markets, largely as tourist groups. When the vendors were asked if they are afraid of being raided, many seemed indifferent. Others replied that it is easy to hide the goods during the raids. In the markets in the Nanzheng Building and at Yatai, we found some vendors used cupboards with special doors to conceal the counterfeit products. One vendor told us that they opened this special door only for foreigners because they were afraid of raids. Besides the large counterfeit markets, countless street vendors and small shops sell pirated DVDs and fake products. Walking down any major thoroughfare in Shanghai, one will be confronted with numerous vendors selling their counterfeit products.

Customs is Key in Shanghai

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¶20. (SBU) Shanghai, as China's largest port, also plays an important role in preventing the export and import of

SHANGHAI 00000315 007.2 OF 007

counterfeit products. (Note: China provides a remedy for seizures of exported infringing products, which is not specifically required by relevant WTO agreements. End note.) Shanghai Customs reported that in 2008 it handled 479 IP infringement cases, an increased of 54.5 percent over 2007 and involving goods worth RMB 71 million (USD 10.4 million). Among these, 90 percent were trademark-related cases. Shanghai Customs reports that it is seeing an increase in counterfeits sent via the postal service. To fight the problem, Shanghai Customs added 2 more officers (after which, four in total) specifically to investigate these cases. Despite Shanghai Customs' efforts, large amounts of counterfeit goods continue to transit the port and the mails. U.S. investigators and rights holders point out that the vast majority of these counterfeits have entered the system through Customs at other points in the Yangtze River Delta area and beyond. Shanghai Customs does not re-inspect goods that have been cleared by other Customs units. (The bill of lading will, however, show Shanghai as the port.)

Comment: Pointing Out the Positive - A Powerful Tool

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¶21. (SBU) At the April 24 IP whitepaper roll-out, which was jointly-sponsored by Shanghai, Jiangsu and Zhejiang, each jurisdiction in turn outlined 2008 accomplishments. Among other things, each jurisdiction highlighted the cooperation and programs conducted with the U.S. Consulate General in Shanghai. Moreover, the Shanghai IP Administration pointed out the positive citation about Shanghai in the USTR's 2008 301 Report. Following the meeting, representatives from both Zhejiang and Jiangsu queried Econoff about how they too could receive recognition in the 301 Report for positive work done on IPR. In a separate meeting in November 2008, Jiangsu High Court officials noted that Shanghai's judicial system was praised in the 2008 301 Report and also queried how they could receive such recognition. Although Shanghai and other municipalities in East China are far from having a perfect record on IPR, they do pay great attention to the 301 Report and other USG commentary on their work. Moreover, when their accomplishments are recognized in front of their colleagues, it provides a tremendous incentive to follow suit.

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